

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

FEDERAL TRADE COMMISSION, STATE
OF CALIFORNIA, STATE OF
COLORADO, STATE OF ILLINOIS,
STATE OF INDIANA, STATE OF IOWA,
STATE OF MINNESOTA, STATE OF
NEBRASKA, STATE OF OREGON, STATE
OF TENNESSEE, STATE OF TEXAS,
STATE OF WASHINGTON, and STATE OF
WISCONSIN,

Plaintiffs,

v.

Case No. 1:22-cv-00828-TDS-JEP

SYNGENTA CROP PROTECTION AG,
SYNGENTA CORPORATION,
SYNGENTA CROP PROTECTION, LLC,
and CORTEVA, INC.,

Defendants.

IN RE CROP PROTECTION PRODUCTS
LOYALTY PROGRAM ANTITRUST
LITIGATION

Case No: 1:23-md-3062-TDS-JEP

**SYNGENTA CROP PROTECTION AG, SYNGENTA CORPORATION, AND
SYNGENTA CROP PROTECTION, LLC'S
MOTION TO COMPEL NON-PARTY ATTICUS LLC'S SUBPOENA RESPONSE**

NOW COMES Syngenta Crop Protection AG, Syngenta Corporation, and Syngenta Crop Protection, LLC (collectively, “Syngenta”), by and through undersigned counsel and pursuant to Rules 37 and 45(d)(2)(B)(i) of the Federal Rules of Civil Procedure and Local Rule 37.1, hereby move this Court for an Order compelling Atticus LLC (“Atticus”) to produce all non-privileged documents in its possession, custody, or control responsive to Syngenta’s Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (the “Subpoena”), or, in the alternative, to timely meet and confer to discuss Atticus’s intended response to the Subpoena. In support of its Motion, Syngenta submits the attached Exhibits A through J in support of the Motion, along with the associated supporting memorandum, and states as follows:

1. On August 6, 2024, the Subpoena issued in the above-captioned cases. The Subpoena is attached as Exhibit A. The operative complaints for these cases and Syngenta’s Answer and Defenses to Plaintiffs’ Amended Complaint in No. 1:22-CV-828 are attached as Exhibit B, Exhibit C, and Exhibit D, respectively.
2. Upon information and belief, Atticus’s principal place of business and registered address is 940 NW Cary Parkway, Suite 200, Cary, NC 27513. A copy of the publicly available North Carolina Secretary of State’s webpage for Atticus is attached as Exhibit E.
3. The Subpoena required compliance at 230 N. Elm Street, Suite 1200, Greensboro, NC 27401, an address within 100 miles of Atticus’s principal place of business and registered address.
4. On August 6, 2024, counsel for Atticus agreed to accept service of the Subpoena via email communications between counsel for Atticus and counsel for Syngenta. A copy of e-

mail correspondence reflecting relevant communications between counsel for Syngenta and counsel for Atticus is attached as Exhibit F.

5. On September 3, 2024, Atticus, through counsel, served its “Responses and Objections to Syngenta’s Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action” (the “Responses and Objections”) A copy of the Responses and Objections is attached as Exhibit G.

6. In the Responses and Objections, Atticus represented that it would conduct a reasonable search for and produce any documents responsive to certain requests and, for all remaining requests, was “willing to meet and confer” with Syngenta “to discuss the scope of” each request and “to allow [Syngenta] the opportunity to more clearly identify the documents it seeks and their relevance.” *E.g.*, Ex. G, p. 11.

7. Atticus did not and has not produced any documents pursuant to that Subpoena. Exhibit H, Declaration of Benjamin M. Miller, Esq., at ¶ 7. Atticus has produced a small volume of documents pursuant to a separate subpoena served by the plaintiffs in No. 1:22-CV-828. *Id.* The plaintiffs’ subpoena to Atticus in No. 1:22-CV-828 is attached as Exhibit I.

8. On September 19, 2024, Syngenta, through counsel, contacted Atticus’s counsel via email requesting to meet and confer. Ex. F; Ex. H, at ¶ 8.

9. Having received no e-mail communication or phone calls from Atticus or its counsel, Syngenta’s counsel reached out once again via email on September 30, 2024 to Atticus’s counsel. Ex. F; Ex. H, at ¶ 9.

10. Two weeks passed. Having still received no e-mail communication or phone calls from Atticus or its counsel, Syngenta’s counsel reached out yet another time via email on October 17, 2024 to Atticus’s counsel. Ex. F; Ex. H, at ¶ 10.

11. Another seven days passed with no response from Atticus. Ex. H, at ¶ 11.

12. Syngenta’s counsel then reached out via phone on October 24, 2024 to try to resolve Atticus’s Responses and Objections to the Subpoena. Despite separate calls to each of Atticus’s outside counsel, Syngenta’s counsel was unable to reach Atticus’s counsel or to leave a voice message. Ex. F; Ex. H, at ¶ 12.

13. Syngenta’s counsel reached out again via email on October 28, 2024 to Atticus’s counsel. Ex. F; Ex. H, at ¶ 13. To date, Atticus counsel has not responded to that email. Ex. H, at ¶ 13.

14. Despite Syngenta’s counsel’s best efforts, it has been unable to discuss a possible resolution of the dispute over the Subpoena with Atticus due to Atticus’s counsel’s failure to respond to any communications since serving the Responses and Objections. This is particularly problematic because this Court has ordered the parties to conclude negotiations regarding subpoenas with certain non-parties, including Atticus, by December 2, 2024. The Court’s order is attached as Exhibit J.

15. Accordingly, pursuant to Local Rule 37.1, the undersigned certify that Syngenta’s counsel have made diligent attempts to resolve this discovery dispute prior to the filing of this motion, but have been unable to engage in the required “personal consultation” under Local Rule 37.1 because of Atticus counsel’s repeated non-responsiveness.

WHEREFORE, Syngenta Crop Protection AG, Syngenta Corporation, and Syngenta Crop Protection, LLC respectfully request that the Court order Atticus to produce all non-privileged documents in its possession, custody, or control responsive to the Subpoena, or, in the alternative, to timely meet and confer to discuss the scope of Atticus’s response to the Subpoena, and any other relief the Court deems just and proper.

This, the 18th day of November, 2024.

/s/ Patrick M. Kane

Patrick M. Kane
N.C. Bar No. 36861

pkane@foxrothschild.com

Sean T. Placey
N.C. Bar No. 56683

splacey@foxrothschild.com

FOX ROTHSCHILD LLP
230 N. Elm Street, Suite 1200
PO Box 21927 (27420)
Greensboro, NC 27401
Telephone: 336.378.5200
Facsimile: 336.378.5400

Charles S. Duggan*

charles.duggan@davispolk.com

James I. McClammy*

james.mcclammy@davispolk.com

Daniel J. Thomson*

daniel.thomson@davispolk.com

DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Telephone: 212.450.4292
Facsimile: 212.701.5292

Benjamin M. Miller*

benjamin.miller@davispolk.com

901 15th Street, NW
Washington, DC 20005

DAVIS POLK & WARDWELL LLP
Telephone: 202.962.7133
Facsimile: 202.962.7196

*Specially appearing under Local Rule
83.1(e)

*Attorneys for Syngenta Crop Protection AG,
Syngenta Corporation, and Syngenta Crop
Protection, LLC.*

CERTIFICATE OF GOOD FAITH EFFORT TO RESOLVE MATTER

I, Benjamin M. Miller, certify that Syngenta Crop Protection AG, Syngenta Corporation, and Syngenta Crop Protection, LLC, through counsel, made a good faith effort consistent with the intent of Local Rule 37.1 to resolve the discovery matters at issue in this Motion and supporting memorandum prior to filing it with the Court.

This 18th day of November, 2024.

/s/ Benjamin M. Miller

Benjamin M. Miller*

*Specially appearing under Local Rule
83.1(e)

*Attorney for Syngenta Crop Protection AG,
Syngenta Corporation, and Syngenta Crop
Protection, LLC.*

CERTIFICATE OF SERVICE

This will certify that on November 18, 2024, I electronically filed the foregoing **Syngenta Crop Protection AG, Syngenta Corporation, and Syngenta Crop Protection, LLC's Motion to Compel Non-Party Atticus LLC's Subpoena Response** using the CM/ECF system in the above-captioned cases, causing service upon the parties thereto, and that I am serving a copy of the same via email and via Federal Express, addressed as follows:

Matthew Dowd (mdowd@dowdscheffel.com)
Elliott Gee (egee@dowdscheffel.com)
Dowd Scheffel PLLC
1717 Pennsylvania Avenue, NW
Suite 1025
Washington, D.C. 20006
Attorneys for Atticus LLC

/s/ Patrick M. Kane _____

Patrick M. Kane
N.C. Bar No. 36861

*Attorney for Syngenta Crop Protection AG,
Syngenta Corporation, and Syngenta Crop
Protection, LLC*